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09/777,418	02/06/2001	Grant D. Green	GDG01.US1	6962

7590 05/22/2003
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EXAMINER
WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	09/177418	Applicant(s)	GREEN
Examiner	S. WEINSTEIN	Group Art Unit	1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

R sponsive to communication(s) filed on 2/7/03

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-3, 8-10, 19, 21-24 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-3, 8-10, 19, 21-24 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement

Application Papers

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All Some* None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. _____.

Copies of the certified copies of the priority documents have been received
in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ International Summary, PTO-413

Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-10, 19, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Institutional Distribution (v. 27, No. 6, page 158, 5/15/91) and Star Tribune (11/22/89, p. 4T), in view of Woman's Day Encyclopedia of Cookery (Vol. II, p. 1784, 1966), Family Circle, Illus. Lib. of Cooking (pages 479, 480, 1972), Advertising Age (8/21/78, page 65), Saulsbury (4,33 5,609), and Slagg (4,840,239), further in view of Pichardo (2745751) Forbes (6/2/97, page 196) and Baltimore Morning Sun (8/4/97, page 5B).

In regard to claim 1, Institutional Distribution discloses a pre-measure portion of brown sugar enclosed in a "suitable" container, wherein the pre-measured portion is an amount equivalent to a pre-measured quantity of brown sugar. Specifically, Institution Distribution provides a pre-determined volume measurement. Applicant has defined brown sugar as turbinado sugar and Institutional Distribution discloses turbinado sugar. It is noted that applicant's specification appears to exclude sugar that is granulated. From the specification, it is not clear if this also means crystalline. Note, too, that since turbinado sugar is crystalline, applicants' specification would appear to be inconsistent for disclosing that turbinado is acceptable yet apparently ruling out a property that turbinado possesses. Clarification and/or correction are requested. In any case,

Institutional Distribution appears to package loosely packaged brown sugar as recited. Note, however, that whether the product stays "loosely packaged" is a function of the external moisture conditions. Claim 1 recites that the "pre-measured" portion is equivalent to a "pre-measured" quantity of firmly packed brown sugar. It is noted that all commercially packaged products are "pre-measured for obvious economic reasons. One is not going to vary contents from one package to another. Claim 1 does not clarify whether the "pre-measured quantity" is a weight or volume measurement. Also, since Institutional Distribution discloses that there are two teaspoons of sugar in the packet and these packets are commercial products, one would clearly have had to either place sugar into teaspoons to weigh out what is the equivalent weight of sugar equal to two teaspoons or consult existing known conversion tables of weight vs. volume.

It is also pointed out that any loosely packaged brown sugar would be equivalent to some measured quantity of firmly packed brown sugar. It is not seen in an article claim that the second instance of pre-measured portion is anything but a functional statement. Thus, Institutional Distribution would have obviously had to determine how much sugar to put into the packet to come up with a pre-determined amount or it would have been obvious to do so in view of the art taken as a whole. Star Tribune is relied on as further evidence of brown sugar in packets having a pre-determined measured amount (e.g. $\frac{1}{2}$ cup). Note, too, that Star Tribune also discloses that $\frac{1}{2}$ cup of the brown sugar is equal to 3.5 ounces. Woman's Day is relied on as further evidence of packaging brownulated sugar and that there is comparative information for substituting brownulated for brown sugar. Family Circle is relied on as further evidence that it was

known in the art to provide a weight/volume relationship for firmly packed, brown sugar so that one would know how many cups equals one pound of firmly packed sugar or how much of a pound equals one cup of firmly packed sugar. Advertising Age is relied on to teach that the relationship between brownulated and brown sugar was also known. Saulsbury and Slagg are relied on as further evidence that it was known that brown sugar created problems in recipes due to its property of variably clumping. Saulsbury teaches leveling and/or compacting as needed. Forbes is relied on as further evidence of brown sugar in packets and Pichardo is relied on as further evidence of providing products such as sugar, albeit, not brown sugar, in containers wherein the sugar has been predetermined to assume certain measurements; specifically volume measurements (e.g., 1 and ½ teaspoons). Finally, Baltimore Sun is relied on to discloses that even brownulated sugar clumps. Therefore, the art taken as a whole teaches applicant is not the first to provide a sugar which is a brown sugar in a container wherein the sugar corresponds to a pre-determined volume measurement and the art taken as a whole teaches that if the brown sugar has a clumping problem, one determines volume by packaging the brown sugar in a volume measuring device to give an accurate volume measurement. Thus, if one construes the second instance of pre-measured quantity as imparting some limitation on the volume, then the art taken as a whole teaches that the firmly packed measurement would have been obvious. The fact is, whether there is no, some, or much clumping of the sugar, if one intends to provide a volume measurement in a package, one has to either manually place the sugar in a volume measuring device and provide any tampering if appropriate to get an accurate

measurement of volume (or consult a measures chart to find out the weight/volume relationship of the sugar). The dependent claims are rejected for the reasons given above and in the Office action mailed July 8, 2002, Paper No. 2.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-3, 8-10 and 19-23 above, and further in view of Modern Packaging, Tremaine, Sal fizberg, Knoop et al and Cozzie for the reasons given in the Office action mailed July 8, 2002, Paper No. 2.

Applicants remarks filed February 7, 2003 have been considered but are moot in view of the New Grounds of Rejection.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

S. Weinstein/dh
May 19, 2003

S. Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER
5/21/03
1761